

STATE OF ILLINOIS
LIQUOR CONTROL COMMISSION

THE LANTERN HAUS CO.
7414 MADISON STREET
FOREST PARK, IL

Appellant,

vs.

FOREST PARK LIQUOR CONTROL
COMMISSION

Appellee.

Case No.: 21 APP 09

License Number: 1A-1140886

ORDER

THIS MATTER having come to be heard before the Liquor Control Commission of the State of Illinois (hereinafter “State Commission”) upon the appeal of The Lantern Haus Co., Appellant, (hereinafter “Lantern Haus”) the Commission being otherwise fully informed, and a majority of its members do hereby state the following:

Procedural History

Lantern Haus holds a local and State of Illinois liquor license at 7414 Madison St., Forest Park, Illinois. The Forest Park Liquor Control Commission (hereinafter “Forest Park Commission”) had previously issued a Class A1 liquor license to Lantern Haus authorizing on-premises consumption of alcoholic liquor. On or about July 25, 2021, Forest Park law enforcement responded to a disturbance call at the Lantern Haus business location resulting in alleged violations of law by Lantern Haus. On August 3, 2021, the Forest Park Commission personally served an agent of Lantern Haus with a Notice of Hearing and Complaint for Liquor Control Violation (“Local Complaint”). The Forest Park Commission held an evidentiary hearing on August 16, 2021, resulting in the issuance of “Findings of Fact and Order Imposing Sanctions” on August 18,

2021. The Order Imposing Sanctions suspended Lantern Haus' Class A1 liquor license for twenty (20) days (six days already served for summary closure). On August 19, 2021, Lantern Haus filed a Notice of Appeal with the State Commission. On January 25, 2022, the State Commission represented by Commissioners Julieta LaMalfa and Steve Powell heard on the record arguments of counsel on the matter. The State Commission as a whole reviewed the entire record and deliberated on the matter at the March 16, 2022, State Commission meeting.

Decision

Upon review of the entire certified record, the State Commission REVERSES the order of the Forest Park Commission to suspend the Lantern Haus Class A1 liquor license.

Discussion

Section 7-9 of the Liquor Control Act of 1934 places the statutory responsibility to hear appeals from final orders entered by local liquor commissioners on the State Commission. 235 *ILCS 5/7-9*. If the county board, city council, or board of trustees of the associated jurisdiction has adopted a resolution requiring the review of an order to be conducted on the record, the Commission will conduct an "On the Record" review of the official record of proceedings before the Local Liquor Commission. *Id.* The State Commission may only review the evidence found in the official record. *Id.* Forest Park has adopted a local ordinance requiring any appeal from an order of the Forest Park Liquor Commissioner to be a review of the official record. *Forest Park Ordinances, Section 3-3-14 (C)(2)(g)*. Accordingly, the Commission will only review the evidence as found in the official record.

In reviewing the propriety of the order or action of the local liquor control commissioner, the State Commission shall consider the following questions:

- (a) Whether the local liquor control commissioner has proceeded in the manner provided by law;
- (b) Whether the order is supported by the findings;
- (c) Whether the findings are supported by substantial evidence in the light of the whole record.

235 ILCS 5/7-9.

The Illinois Appellate Court has provided guidance that this Commission's duty is to determine whether local agency abused its discretion. *Koehler v. Illinois Liquor Control Comm'n*, 405 Ill. App. 3d 1071, 1080, (2nd Dist. 2010). The Court held that "[s]uch review mandated assessment of the discretion used by the local authority, stating that '[t]he function of the State commission, then, in conducting a review on the record of license suspension proceedings before a local liquor control commissioner is to consider whether the local commissioner committed an abuse of discretion.'" *Koehler*, 405 Ill. App. 3d at 1080 (2nd Dist. 2010).

A. Whether the local liquor control commissioner has proceeded in a manner provided by law.

The Forest Park Commission acted in a manner provided by law by providing the Forest Park Tap with the minimum due process to defend against the charges identified in the Local Complaint.¹ As to technical notice requirements, the Liquor Control Act requires a local commission to provide a minimum of three days written notice of the charges to a licensee to answer to revocation or suspension charges at a hearing. 235 ILCS 5/7-5. In this case, the Forest Park Commission personally served a Notice of Hearing and Local Complaint on Lantern Haus on August 3, 2021, and the hearing was eventually held on August 16, 2021, almost two weeks later.

¹ The State Commission's decision herein does not include a review of the Local Commission basis for summary closure issued for six days beginning July 27, 2021, pursuant to 235 ILCS 7-5.

Proof of Service of Notice of Hearing and Complaint, FP.000020. The Local Complaint alleged very specific facts and charged Lantern Haus with violations of Sections 3-1-4(B) (“Nuisance in Fact Ordinance”) and Section 3-3-13(B) (Preservation of the Peace Ordinance”) allowing Lantern Haus to prepare a defense to the specific charges. *Local Commission Complaint, FP.000012-FP.000019.* Lantern Haus was represented by outside counsel at the local hearing. Solely related to the process offered to Lantern Haus, the Forest Park Commission met the requirements of the Illinois Liquor Control Act and proceeded according to law.

B. Whether the order is supported by the findings.

In reviewing whether the order is supported by the findings, this Commission analyzes whether the findings contained within the order constitute grounds to suspend the license. The Illinois Appellate Court has ruled that, as a reviewing body, the issue is not whether the reviewing court would decide upon a more lenient penalty were it initially to determine the appropriate discipline, but rather, in view of the circumstances, whether this court can say that the commission, in opting for a particular penalty, acted unreasonably or arbitrarily or selected a type of discipline unrelated to the needs of the commission or statute. *Jacquelyn's Lounge, Inc. v. License Appeal Comm'n of City of Chicago*, 277 Ill. App. 3d 959, 966, (1st Dist. 1996).

In this case, if the Forest Park Commission met all evidentiary standards to prove a violation of law, then the Forest Park Commission would have appropriately acted within its discretion to suspend the Lantern Haus liquor license. In fact, the Preservation of Peace Ordinance expressly provides notice to liquor license holders that the Forest Park Commission may revoke or suspend a license or impose fines “or take any other action necessary to prevent the reoccurrence of a public nuisance” as defined. *Local Ordinances, FP.000200.* If the circumstances of the July 25, 2021, public disruptions at or near Lantern Haus violated the local Nuisance in Fact Ordinance

or Preservation of Peace Ordinance, the Forest Park Commission would not have acted “unreasonably or arbitrarily” in issuing a twenty-day suspension of the Lantern Haus liquor license.

C. Whether the findings are supported by substantial evidence in the light of the whole record.

The Forest Park Commission did not, however, issue findings supported by substantial evidence in light of the whole record. Upon review, an agency's findings of fact are held to be prima facie true and correct, and they must be affirmed unless the court concludes that they are against the manifest weight of the evidence.” *Daley v. El Flanboyen Corp.*, 321 Ill. App. 3d 68, 71, (1st Dist. 2001). A finding is “against the manifest weight of the evidence only if an opposite conclusion is clearly evident from the record.” *Vino Fino Liquors, Inc v. License Appeal Comm’n of the City of Chicago*, 394 Ill.App.3d 516, 522 (1st Dist. 2009). In this case, the record is clear that, upon a reasonable interpretation of the Forest Park ordinances, the Forest Park Commission ruled against the manifest weight of the evidence finding that Lantern Haus violated the Nuisance in Fact Ordinance and the Preservation of the Peace Ordinance for incidents occurring at or near the Lantern Haus on July 25, 2021.

Forest Park ordinances place obligations on businesses not to operate as a public nuisance or create a disturbance of the peace. The Nuisance in Fact Ordinance states: “No business, licensed or unlicensed, shall be so conducted, or operated, so as to amount to a nuisance in fact.” *FP.000218*. The Preservation of Peace Ordinance states:

B. Preservation Of The Peace

1. It shall be the duty and responsibility of each liquor license holder, his agents or employees to maintain the premises in a peaceable and orderly manner so as not to allow any employee, patron or member of the public to commit any act,

which act is done in an unreasonable manner so as to alarm or disturb another or to provoke a breach of the peace.

2. Each liquor license holder shall employ sufficient agents or employees on the premises in order to maintain the peace. Any employee, agent or person acting on behalf of the liquor license holder shall be suitably trained to maintain the peace of the premises and shall not act in any manner so as to promote or aggravate situations which may result in physical altercations, fighting or other acts of an unreasonable manner so as to alarm or disturb another or provoke a breach of the peace.
3. No liquor license holder his agents or employees shall knowingly permit any fighting which shall consist of physical contact of an insulting or provoking nature or cause physical harm to an individual
4. "Premises", as defined for the purposes of this section shall mean the actual physical space within the establishment where alcoholic beverages are sold to the public, area set aside for the use by the general public (restrooms or lounges), any area used by the liquor license holder, his agents or employees for preparation of services (kitchen and storage areas) and any outdoor area wherein the public is served for waiting to be served or where customers are authorized to park any vehicle as well as the areas of ingress and egress to such parking facility.
5. Every liquor license holder, agent or employee who is present and observes any type of criminal activity or fighting, as defined above, is required to immediately notify the police department. The police department shall then notify the local liquor commissioner of any conduct or patrons or other persons on the premises of a liquor license establishment which results in any type of criminal activity, fighting or a breach of the peace.
6. Failure to report any incident as required under this subsection within two (2) business days may subject the liquor license holder to a revocation or suspension of the retail liquor dealer's license, as well as possible fines imposed by the local liquor commissioner in the manner provided by statute.
7. The local liquor commissioner shall have the right and/or authority to revoke or suspend the retail liquor dealer's license as well as impose fines or take any other legal action necessary to prevent the reoccurrence of a public nuisance as hereinabove define in the manner provided by statute.

Local Ordinance, FP.000199-200.

The Forest Park Commission found Lantern Haus at fault for both the commission and omission of acts violating the Nuisance in Fact and Preservation of the Peace Ordinances. Per the

“Findings of Fact and Order Imposing Sanctions” (“Local Order”), Lantern Haus agents: 1. Conducted the business “amount[ing] to a nuisance in fact”; 2. Allowed a “member of the public to commit an[] act, which act is done in an unreasonable manner as to alarm or disturb another or to provoke a breach of peace”; 3. Failed to “employ sufficient agents or employees on the premises in order to maintain the peace”; and, 4. Knowingly permitted fighting consisting of “physical contact or an insulting or provoking nature or cause physical harm to an individual.” *Local Order*, ¶¶ 1, 2., *FP.000184-000185*. Based on the Local Order, on July 25, 2021, Lantern Haus’ actions and inactions caused a public nuisance, allowed patrons to breach the peace, failed to hire sufficient security, and knowingly permitted fighting. The State Commission disagrees, however, the evidence in the record supports any of these charges.

Related to the public nuisance finding, the Forest Park ordinance does not define a public nuisance or nuisance in fact. The lack of a defined public nuisance does not mean that Lantern Haus cannot be held accountable for committing a nuisance, but it does mean that Lantern Haus actions and inactions related to this charge should be judged on a common law negligence standard. Illinois courts have accepted the Torts Restatement definition of nuisance. *Wheat v. Freeman Coal Mining Corp.* (1974), 23 Ill. App. 3d 14, 18, 319 N.E.2d 290; *City of Chicago v. Commonwealth Edison Co.* (1974), 24 Ill. App. 3d 624, 631, 321 N.E.2d 412. The Restatement defines nuisance as an “unreasonable interference with a right common to the general public.” *Restat 2d of Torts*, § 821B. Based on this definition, Lantern Haus cannot be held strictly liable for a nuisance emanating from its business but rather Lantern Haus agents must have *negligently* interfered with a common right before Lantern Haus may be found liable for a public nuisance.

In this case, if there was an interference with a common right, it likely would have occurred as a result of patrons exiting the Lantern Haus after an altercation had occurred inside the business.

The record is clear that some Lantern Haus patrons caused public disruptions by yelling, jaywalking, and fighting on the downtown streets of Forest Park after exiting Lantern Haus during the early evening of July 25, 2021. The record, however, does not contain any evidence that Lantern Haus actions unreasonably contributed to the disruptions. Even though the record demonstrates that Lantern Haus personnel were responsible for ushering approximately fifty people outdoors at one time, this action was in response to an altercation within the premises. *Local Transcript, FP.000098, FP.000122, FP.000126*. Lantern Haus personnel took this course of action as required by the ordinance to break up and diffuse the altercation. Within minutes, once it was clear the patrons were not dispersing, Lantern Haus personnel called the police to assist in crowd dispersion. *Id., at FP.000122*. While it is true a violent fight occurred between Lantern Haus patrons on Hannah Street, a half block away from the front of the business, Lantern Haus actions or inactions did not cause this fight. In fact, Lantern Haus agents attempted to prevent the fight by separating the combatants. *Id., at FP.000122-FP.000124*. The victim of the Hannah Street fight left the premises on his own accord. *Id., at FP.000124*. Lantern Haus agents did not force the victim to leave the premises, nor could Lantern Haus agents have prevented him from leaving. There is no other evidence in the record that proves the Lantern Haus actions, or inactions, negligently caused the Hannah street fight.

The evidence in the record also does not support the charge that Lantern Haus failed to hire sufficient security personnel in violation of the Preservation of the Peace Ordinance. Similar to the public nuisance finding, Forest Park does not have any express requirements in the Ordinance, nor any guidelines which mandated Lantern Haus hire a specific number of security personnel. While such lack of specificity does not absolve Lantern Haus from a duty to hire sufficient security,

Lantern Haus security obligations should be evaluated on a negligence standard similar to the nuisance finding.

The evidence in the record does not support a finding that Lantern Haus negligently failed to hire enough security to prevent the public disruption on July 25, 2021. First, it is clear from the record, viewing the facts in a light most favorable to the Forest Park Commission, that Lantern Haus did have at least one trained security person working during the early evening hours of July 25, 2021. *Local Transcript, FP.000133*. There is nothing in the record mandating Lantern Haus be required to have more than one security personnel at all times. Second, the event at the Lantern Haus at that time was “a pop-up shop event where vendors were selling merchandise and advertising their businesses at separate little booths.” *Local Order, ¶3, FP.000185*. In judging security measures based on the type of event, it is at least plausible that one security person designated for a vending “pop up shop” event would have been sufficient to maintain the peace. There is no evidence in the record that this pop-up shop event, by its very nature, would lead to public disruption. There is no evidence that pop-up shop events generally involve heavy alcohol consumption or lead to public disruptions, nor that Lantern Haus or other Forest Park businesses had previous unpeaceful pop-up shop events. Third, July 25, 2021, was a Sunday and the pop-up shop event was held in the late afternoon to early evening hours. Neither the record nor common sense suggests that non-peaceful disturbances regularly occur in the late Sunday afternoon to early evening hours. There is nothing else in the record that would have suggested this particular pop-up shop event would turn into an atypical violent event.

In an effort to prove Lantern Haus officials knew or should have known the pop-up event needed more security, the Forest Park Commission references post-incident statements made by the Lantern Haus owner and agents after the July 25 incidents, but such statements fall short of

proving Lantern Haus acted unreasonably or with prior knowledge. After the public disturbances on July 25, Lantern Haus owner Patrick Jacknow published a Facebook post apologizing for public disruptions that began with a disturbance within Lantern Haus. Specifically, the Forest Park Commission notes that Jacknow acknowledged a lack of security by stating: “Unfortunately because this was not the type of event I felt needed more than one security personnel, I had only one man on that position.” *Village Exhibit 2, FP.000170*. This statement, however, does not prove Jacknow knew or should have known *before the event* that the event needed more security. The statement merely expresses regret after it became clear that the event may have needed more security.

The Local Order also referenced licensee agents’ testimony as describing the disputing groups as “warring”, but the testimony does not demonstrate the agents for the licensee knew or should have known *prior to the event* the opposing factions were “warring.” Two examples of the testimony read as follows:

Q. And you sent one of the warning (sic) factions out the door the other way; correct?

A. Yes

Local Transcript, (Julienne Tooless Testimony), FP.000123.

Q. And you stated that there was an altercation and you specifically stated it was a verbal altercation. So there were only words that were being said between warring factions as you stated?

A. Yes.

Local Transcript, (Demarcus Jones Testimony), FP.000139-000140. Nothing in the testimony suggests that the Lantern Haus agents knew the disputing groups were known warring factions. The testimony is an answer to a question posed by the prosecutor eliciting a response related to

two groups that were fighting or “warring” on July 25, 2021. Therefore, the statements made by Lantern Haus personnel are not evidence that the Lantern Haus knew or should have known the circumstances of the pop-up event required a larger security presence and thus the statements are not evidence that Lantern Haus acted negligently by failing to hire more security.

Related to the remaining findings of the Preservation of the Peace Ordinance violations, there is no evidence in the record that Lantern Haus “allow[ed]” a “member of the public to commit an[] act, ... to alarm or disturb another or to provoke a breach of peace”, nor did Lantern Haus “knowingly permit” fighting consisting of “physical contact or an insulting or provoking nature or cause physical harm to an individual.” In fact, the manifest weight of the evidence in the record shows Lantern Haus took active measures to prevent fighting and other disturbances. The only testimony in the record about what happened inside the Lantern Haus is the uncontested testimony that Lantern Haus officials intervened to break up an altercation by separating two groups of people in an attempt to deescalate a breach of the peace. In deescalating the altercation, Lantern Haus agents ended the pop-up event, separated the groups, and required one group to leave. *Local Transcript, FP.000122*. To prevent further escalation, Lantern Haus officials prevented persons from one of the groups from re-entering the business. *Id.* Within minutes, once it became clear the group outside was not dispersing, the Lantern Haus agents called the police to assist with disbursement. *Id., at FP.000122-FP.000123*. Lantern Haus agents assisted and cooperated with police when they arrived on the scene. *Id., at FP.000124, FP.000126*. The violent fight that occurred on Hannah Street was not on the Lantern Haus “premises” as defined in the Preservation of the Peace Ordinance, and, thus, Lantern Haus agents could not have been accountable for not intervening to stop the Hannah Street fight. Therefore, there are no facts in the record that demonstrate Lantern Haus officials “allowed” a patron to breach the peace or “knowingly

permitted” fighting in violation of the Preservation of the Peace Ordinance. The manifest weight of the evidence shows Lantern Haus agents took active measures on the Lantern Haus premises to intervene between disputing parties to deescalate the altercation as required by the ordinance.

In summary, Lantern Haus did not cause a public nuisance, did not negligently fail to hire sufficient security, and did not allow or permit disputes or fighting to occur on the Lantern Haus premises. For the above stated reasons, the Forest Park Commission ruled against the manifest weight of the evidence in finding Lantern Haus committed violations of the Nuisance in Fact and Preservation of the Peace Ordinances.

IT IS HEREBY ORDERED:

For the reasons stated herein, because the Forest Park Commission did not rely on substantial evidence in light of the whole record, the decision to suspend the Lantern Haus liquor license for twenty (20) days, is REVERSED.

Pursuant to 235 ILCS 5/7-10 of the Illinois Liquor Control Act, a Petition for Rehearing may be filed with this Commission within twenty (20) days from the service of this Order. The date of mailing is deemed to be the date of service. If no Petition for Rehearing is filed, this order will be considered the final order in this matter. If the parties wish to pursue an Administrative Review action in the Circuit Court, the Petition for Rehearing must be filed within twenty (20) days after service of this Order as such the Petition for Rehearing is a jurisdictional prerequisite to filing an Administrative Review action.

ENTERED before the Illinois Liquor Control Commission at Chicago, Illinois, on March 16, 2022.



Cynthia Berg, Chairman



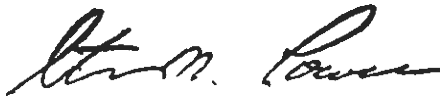
Melody Spann Cooper, Commissioner



Thomas Gibbons, Commissioner



Julieta LaMalfa, Commissioner



Steven Powell, Commissioner

Donald O'Connell, Commissioner

Patricia Pulido Sanchez, Commissioner

